

HUMAN SERVICES

DIVISION OF MENTAL HEALTH SERVICES

Community Mental Health Services Act

Proposed Readoption with Amendments: N.J.A.C. 10:37

Proposed Repeal: N.J.A.C. 10:37 Appendix B

Proposed Recodifications with Amendments: N.J.A.C. 10:37-10 as 10:190-1 and  
10:37-12 as 10:191

Authorized By: Kevin M. Ryan, Commissioner, Department of Human Services

Authority: N.J.S.A. 30:1-12, and 30:9A-10 and 21.

Calendar Reference: See Summary below for explanation of exception to  
calendar requirement.

Proposal Number: PRN 2006-198

Submit written comments by August 18, 2006 to:

Melanie S. Griffin, Esquire

Legal Liaison

Division of Mental Health Services

P.O. Box 727

Trenton, New Jersey 08625-0727

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 10:37, Community Mental  
Health Services Act rules, expires on December 29, 2006. The Department of

Human Services (the Department), through the Division of Mental Health Services (the Division) has reviewed these rules and has determined that they are necessary, reasonable and proper and that their continued implementation, with the amendments proposed herein, would benefit consumers, providers, and other members of the public by delineating the effective delivery of high quality mental health services.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

N.J.A.C. 10:37 sets operational standards for providers of community mental health services. It was originally filed prior to September 30, 1969, under the authority of N.J.S.A. 30:9A-1 et seq., the Community Mental Health Services Act, which provides for the development of preventive treatment and transitional services for consumers of mental health services through the improvement and expansion of community mental health programs across the State. Amendments to N.J.A.C. 10:37-6.3 (formerly "Definitions") and N.J.A.C. 10:37-7.3 (formerly "System of per capita allocation") were effective May 4, 1976. Former Subchapter 12 (now Subchapter 8), Conditions governing State grants for construction assistance for community mental health facilities, was adopted as new rules effective December 23, 1977. N.J.A.C. 10:37 was repealed and replaced with new rules effective November 3, 1980, and pursuant to Executive

Order No. 66(1978), it was readopted effective November 4, 1985, November 2, 1990, and October 26, 1995. New rules regarding the licensure of community mental health programs (N.J.A.C. 10:37-10) were adopted, effective June 5, 2000. Licensure rules were adopted, effective October 4, 2004, to reflect the transfer of licensing authority from the Division to the Department.

In recent years, New Jersey's mental health system has seen many important developments which promise to have a positive impact on the lives of its consumers. In 2005, Governor Richard Codey convened a Mental Health Task Force to review and recommend changes necessary to reinvigorate the State's mental health system. While the Task Force undertook an examination of all aspects of the State's mental health system, a significant portion of the Task Force's Final Report (issued March 31, 2005, See <http://www.nj.gov/mentalhealth/finalreport.html>) emphasized the important concepts of wellness and recovery as foundational in the delivery of community-based mental health services (Task Force Report, pp. 80 - 104). These principles are based on a belief that consumers must be the authors of their own recovery, which has been defined as involving the "development of new meaning and purpose in one's life as one grows beyond the catastrophic effects of mental illness." (Anthony, W.A. (1993) "Recovery from Mental Illness: the Guiding Vision of the Mental Health Services System in the 1990's." *Psychosocial Rehabilitation Journal*, 16(4), 11-23). Wellness, the goal of recovery, has been described as "an active process of becoming aware of and making choices

toward a more successful existence (National Wellness Institute (USA) World Wide Web, January 5, 2002, [www.nationalwellness.org](http://www.nationalwellness.org)). A wellness lifestyle leads to positive outcomes that can be measured in terms of improved health status, greater productivity, enhanced social relationships, and participation in purposeful activity – all of which provide meaningful opportunities for healing, personal growth, and an improved quality of life (Swarbrick, M. (1997) “A Wellness Model for Clients.” *Mental Health Special Interest Section Quarterly*, 20, 1-4).

The Task Force Report noted that in a mental health program based on wellness and recovery principles, the staff must be “promoters of true, informed consumerism; optimistic and informed about recovery including working from a strengths focus, supportive towards positive risks taken by the consumer, respecting the importance of purpose and meaning in consumer’s lives, promoting internal motivation; skilled in relevant interventions and best practices; trained and supervised in a relevant manner; respectful listeners and communicators; collaborators with consumer and families.” (Task Force Report, p. 95, referencing the President’s New Freedom Initiative (2003, 2004); and the National Association of State Mental Health Programs (NASMHPD) Technical Assistance Center e-Report on Recovery, [www.nasmhpd.org/spec\\_e-report\\_fall04intro.cfm](http://www.nasmhpd.org/spec_e-report_fall04intro.cfm)).

Pursuant to Executive Order No. 78 (January 13, 2006), the Department is committed to the incorporation of these principles into all of its mental health

rules, including N.J.A.C. 10:37. However, additional time is necessary to allow for a complete and accurate revision of N.J.A.C. 10:37 and to include the participation of consumers, providers and other interested parties in this process. Therefore, the Department is seeking to readopt N.J.A.C. 10:37 without amendments to allow this process to unfold, with the exception of the following sections: N.J.A.C. 10:37-6.79, Confidentiality of records; N.J.A.C. 10:37-10, Licensure of mental health programs; N.J.A.C. 10:37-12, Children's Partial Care Programs; and Chapter Appendix B.

#### Summary of Current Subchapters

Subchapter 1, Introduction and purpose, explains that implementation of the chapter serves to unify the community mental health system and to establish formal relationships between the community and the institutional mental health sectors.

Subchapter 2, State Community Mental Health Citizens Advisory Board, delineates the membership, functions and authority of this entity.

Subchapter 3, County Mental Health Board, describes the functions, authority, and membership of this board, as well as that of the county mental health administrators.

Subchapter 4, Consumer Requirements for All Community Mental Health Program Elements, contains provisions requiring provider agencies, county mental health boards, and the State Community Mental Health Citizens' Advisory

Board to incorporate consumer involvement in their functions. In addition, this subchapter delineates consumer rights and complaint procedures.

Subchapter 5, Program Element Requirements, contains requirements regarding funding priorities, target populations, inpatient units, systems advocacy, and consultation and education.

Subchapter 6, General Administrative Requirements for all State-Funded Community Mental Health Program Elements, concerns such requirements as service and treatment planning, least restrictive setting, medication education and counseling, recordkeeping, confidentiality of records, consumer service and fiscal reports, staff training and development, interaction among agencies and inpatient facilities, and unusual incident reporting.

Subchapter 7 is reserved.

Subchapter 8, Conditions Governing State Grants for Construction Assistance for Community Mental Health Facilities, sets forth program priorities, procedures and conditions under which State funding for the construction of mental health facilities may be obtained.

Subchapter 9, Quality Assurance, requires provider agencies to implement an ongoing program evaluating and monitoring the quality of services delivered to consumers.

Subchapter 10, Licensure of Mental Health Programs, delineates the scope and purpose of licensure, as well as the procedures and standards applicable to this process.

Subchapter 11 is reserved.

Subchapter 12, Children's partial care programs, describes the purpose, population to be served, program services, staffing requirements, recordkeeping, and admission and intake procedures for this program.

Appendix A sets forth a continuum of mental health settings, while Appendix B delineates Level I standards.

### Summary of proposed amendments

#### N.J.A.C. 10:37-6.79 Confidentiality of records

The section regarding confidentiality contains many obsolete, unclear and inaccurate statements, and therefore, it is imperative that this section be amended at this time. Throughout this section "client" has been changed to "consumer" to reflect current usage, and "consent" (when used to signify a person's permission for the disclosure of his or her confidential records) has been changed to "authorization" or "authorize," as delineated in the Health Insurance Portability and Accessibility Act, 45 CFR Parts 160 and 164 (HIPAA) and as distinct from consent to treatment.

Proposed amendments at N.J.A.C. 10:37-6.79(a) reflect the requirements of State and Federal confidentiality law (N.J.S.A. 30:4-24.3; R.4:74-7A(c); and HIPAA). Specifically, proposed amendments (1) add "certificates," "applications" and any other documents that "directly or indirectly identify" consumers to the category of protected items; (2) remove the restriction that only providers who receive State funds need abide by these confidentiality rules; (3) delete the

prerequisite that a formal “client record” must be established before confidentiality restrictions apply; and (4) include licensed agencies from whom services were sought (not just those who actually provided services).

Proposed amendments at N.J.A.C. 10:37-6.79(a)1 reorganize and clarify the prerequisites for disclosure of confidential information to third parties where the consumer grants authorization. Existing language at N.J.A.C. 10:37-6.79(a)1 is proposed for deletion from that section because it has been moved to N.J.A.C. 10:37-10.6.79(a) (“directly or indirectly identifying persons who are receiving or have received mental health services....” and N.J.A.C. 10:37-6.79(b) (disclosure “upon presentation of appropriate credentials”).

At N.J.A.C. 10:37-6.79(a)1i, proposed amendments add “authorized representative” as an additional person whom may consent to disclosure to third parties, consistent with HIPAA.

At new N.J.A.C. 10:37-6.79(a)1ii(1), proposed amendments add further detail as to the prerequisites for authorization by a minor. The amendments clarify that such a minor is one who has requested admission and been admitted voluntarily authorization to a psychiatric facility, special psychiatric hospital, or children’s crisis intervention service pursuant to R. 4:74-7A(c). Proposed amendments add the same detail to new N.J.A.C. 10:37-6.79(a)1ii(2) (regarding disclosure upon consent of the minor’s parent or legal guardian) and N.J.A.C.



10:37-6.79(a)1ii(3) (regarding disclosure to the minor's parent or legal guardian). Additional amendments to the latter provision allow disclosure to the parent or legal guardian of information regarding the minor patient's current medical condition, provided that the minor does not object to such disclosure.

N.J.A.C. 10:37-6.79(a)1iii has been recodified as N.J.A.C. 10:37-6.79(a)2, and delineates the requirements for disclosure pursuant to court order. Language has been added to this paragraph to state that a court may direct disclosure, upon its determination that disclosure is necessary for the conduct of its proceedings before it and that failure to make such disclosure would be contrary to the public interest.

New N.J.A.C. 10:37-6.79(a)3 allows disclosure where necessary to carry out any provisions of Title 30 or Article 9 of Chapter 82 of Title 82A of the New Jersey Statutes (N.J.S.A. 2A:82-41), or as required by other Federal or State law.

At new N.J.A.C. 10:37-6.79(b) (recodified from N.J.A.C. 10:37-6.79(a)1iv), proposed amendments announce that disclosure will be permitted only to persons who present appropriate credentials and under certain circumstances.

N.J.A.C. 10:37-6.79(a)1iii(3) is relocated as N.J.A.C. 10:37-6.79(b)1 with technical amendments. New N.J.A.C. 10:37-6.79(b)1 allows employees of the

agency to disclose information that is relevant to a consumer's treatment to the staff of another agency, so long as such disclosure is in compliance with HIPAA.

At new N.J.A.C. 10:37-6.79(b)2 (recodified from N.J.A.C. 10:37-6.79(a)1iv(1)), proposed amendments add the New Jersey Department of Health and Senior Services and the Center for Medicaid and Medicare Services to the entities to whom disclosure of consumer records may be made. Also in this section, proposed amendments change "Division" to "Department," reflecting the transfer of licensing and monitoring functions, pursuant to an internal reorganization.

N.J.A.C. 10:37-6.79(a)1iii(1) has been relocated as new N.J.A.C. 10:37-6.79(a)1iii(1) has been relocated as new N.J.A.C. 10:37-6.79(c), and requires the release of a minor's records upon request of the DHS Office of Children's Services in connection with investigations of whether the minor has been abused or neglected.

At N.J.A.C. 10:37-6.79(d) (recodified from N.J.A.C. 10:37-6.79(a)1v), proposed amendments add a requirement that, where deletion of names is not possible, consumers be identified in disclosed records only by initials, and update a cross-reference.

Proposed new N.J.A.C. 10:37-6.79(e) adds HIPAA requirements that a consumer be given the opportunity to object prior to disclosure of the consumer's current medical condition to any relative or friend. Further, information may be disclosed to any licensed mental health provider or medical health care provider who has a contract with the Division or the Department, or to the consumer's personal physician if it appears that the information is to be used for the benefit of the consumer.

N.J.A.C. 10:37-6.79(a)1iii(2) has been relocated as new N.J.A.C. 10:37-6.79(f) and amended to allow the next of kin to authorize the release of records of a deceased individual who has received services or for whom services were sought, when there is no estate administrator or executor to release the records. A valid written authorization for the release of information must be obtained from next of kin: (1) natural or adoptive parents; (2) siblings; (3) grandparents; (4) family caregiver of record; (5) spouse; or (6) child/children.

At new N.J.A.C. 10:37-6.79(g) (recodified from N.J.A.C. 10:37-6.79(a)2), proposed amendments specify certain conditions (summarized below) that must be present when disclosure is made to third parties, pursuant to N.J.A.C. 10:37-6.79(b).

New N.J.A.C. 10:37-6.79(g)1 (recodified from N.J.A.C. 10:37-6.79(a)2i) requires the custodian of the records to advise, by written notice, the person

receiving the records that disclosure without authorization (changed from “consent” to be consistent with HIPAA) of the person who is the subject of the records, or as otherwise provided by law, is prohibited.

New N.J.A.C. 10:37-6.79(g)2 (recodified from N.J.A.C. 10:37-6.79(a)2ii) sets conditions for disclosure of information regarding a consumer. Proposed amendments delete the phrase restricting the applicability of these conditions to disclosure to third parties and expand applicability of these conditions to disclosure “for any purpose. Additional proposed amendments add to the qualification that such disclosure shall be limited to that information which is relevant and necessary for the purpose of the disclosure, with the exception the “consumer or his or her representative” may otherwise authorize. Finally, proposed amendments to this paragraph add that “where the disclosure is between agencies for the purpose of treatment and is not limited by the consumer’s authorization, the agency releasing the information shall rely upon the recipient’s assertion of need for the information.”

New N.J.A.C. 10:37-6.79(g)3 (recodified from N.J.A.C. 10:37-6.79(a)2iii) requires that a request for information regarding a consumer and the action taken upon the request shall be recorded in the consumer’s clinical records and adds the phrase “and accounted for if requested by the consumer for up to 6 years from the date of disclosure.”

A proposed amendment at N.J.A.C. 10:37-6.79(g)4 (recodified from N.J.A.C. 10:37-6.79(a)2iv) updates a cross-reference to be consistent with the section's reorganization.

Proposed amendments at N.J.A.C. 10:37-6.79(h) (recodified from N.J.A.C. 10:37-6.79(a)3i) adds the requirement that the authorization evidencing consent to disclosure must be from the consumer or his or her legally authorized representative. Another proposed amendment at new N.J.A.C. 10:37-6.79(h)1i (recodified from N.J.A.C. 10:37-6.79(a)3i(1)) states that the authorization must contain the name of the agency disclosing the information. A proposed amendment at N.J.A.C. 10:37-6.79(h)2 (recodified from N.J.A.C. 10:37-6.79(a)3ii) adds that an event triggering expiration determined with the consumer and noted on the release form may supercede the usual four-month expiration term of a consumer's authorization to the release of information. A further amendment deletes the exception provided for quality assurance reviews and inspections by regulatory agencies. This deletion is proposed to be consistent with HIPAA regulations, 45 CFR 164.528.

Proposed amendments at N.J.A.C. 10:37-6.79(i)1 (recodified from N.J.A.C. 10:37-6.79(a)4i) clarify that all adult participants and the guardians of any minor participants must agree through a signed authorization before any integrated family therapy records may be released.

Proposed amendments at new N.J.A.C. 10:37-6.79(i)3 (recodified from N.J.A.C. 10:37-6.79(a)4iii) specify that a consumer is entitled to inspect or receive a copy of his or her financial (changed from “non-clinical”) records.

At new N.J.A.C. 10:37-6.79(i)4 (recodified from N.J.A.C. 10:37-6.79(a)4iv), a proposed amendment updates a cross-reference to reflect the section’s reorganization.

Proposed amendments at N.J.A.C. 10:37-6.79(j)1 (recodified from N.J.A.C. 10:37-6.79(a)5i) delete the limitation that a consumer’s statement to the Director of the agency must be “of reasonable length” and also delete the phrase “an allegedly ambiguous or incorrect statement,” allowing the consumer to request any correction in his or her clinical record. A proposed amendment at N.J.A.C. 10:37-6.79(j)2 (recodified from N.J.A.C. 10:37-6.79(a)5ii) adds that a consumer may request clarification, in addition to an amendment, of a clinical record.

New N.J.A.C. 10:37-6.79(k)4 requires that at the time a formal consumer record is going to be initiated for ongoing service purposes, each consumer shall receive notice of the name of the agency’s privacy officer and the avenues for redress of any complaints the consumer may have that his or her privacy was violated.

New N.J.A.C. 10:37-6.79(l) requires that agency records directly or indirectly identifying a consumer shall be retained for six years.

#### Summary of proposed amendments to Subchapters 10 and 12 and Appendices A and B

Current N.J.A.C. 10:37 specifies licensure requirements for mental health programs at N.J.A.C. 10:37-10, and requirements for children's partial care programs at N.J.A.C. 10:37-12. The Department is proposing to readopt and amend these subchapters, and to recodify them as N.J.A.C. 10:190 and 10:191, respectively. The rules proposed for readoption with amendments and recodification are summarized below.

Pursuant to Reorganization Plan No. 007-2005 (see 37 N.J.R. 4595(a)), effective January 9, 2006, the licensing-related functions, powers, duties and personnel of the Division of Mental Health Services were transferred to the Department's Office of Program Integrity and Accountability, specifically to its Office of Licensing. The Department's Office of Licensing was established in 2002 to streamline the administration and improve the consistency and coordination of licensing practices in the Department. Operating within the Department's Office of Program Integrity and Accountability, the Office of Licensing consists of operational units formerly under the auspices of the Division of Developmental Disabilities, Division of Mental Health Services and

Division of Youth and Family Services. The Office of Licensing is responsible for more than 18,000 regulated programs serving children and adults.

In a prior rulemaking action (see 36 N.J.R. 4824(a)), the regulatory authority for licensing mental health services governed by N.J.A.C. 10:37 was transferred from the Division of Mental Health Services to the Department of Human Services, in order to reflect the administrative reorganization of licensing and related operations. At that time, the rules within N.J.A.C. 10:37 concerning licensing procedures remained as subchapter 10 in the existing chapter assigned to the Division of Mental Health Services. As the next step in the process of licensing consolidation, this proposal seeks to recodify the licensing rules now at N.J.A.C. 10:37-10 as a new chapter, N.J.A.C. 10:190, assigned to the Department. Amendments to the licensing rules are also proposed to update terminology, reflect current practice and add provisions where needed so that the new chapter can stand alone, as discussed below.

In addition, this proposal seeks to readopt, amend and recodify the requirements for children's partial care programs, N.J.A.C. 10:37-12. In keeping with the Department's Child Welfare Reform Plan, *A New Beginning*, the Office of Children's Services (OCS) was created within the Department in 2004 to oversee programs for children, including children's mental health programs. Contracting and funding for children's mental health programs were transferred from the Division of Mental Health Services to the Office of Children's Services. Since the



scope of N.J.A.C. 10:37 applies to programs funded by the Division (see N.J.A.C. 10:37-1.2), the regulation of children's partial care programs is beyond the scope of N.J.A.C. 10:37. Accordingly, the Department proposes to readopt and recodify the rules for children's partial care programs at N.J.A.C. 10:37-12 as N.J.A.C. 10:191, assigned to the Department to regulate those programs. Amendments are also proposed to update certain provisions and to add provisions where needed so that the new chapter can stand alone, as discussed below.

In a future separate rulemaking action, the Department will propose to amend and recodify N.J.A.C. 10:37A-2, Licensing, Site Review and Waivers, for community residences for mentally ill adults, N.J.A.C. 10:190A. The Department is also proposing to amend and recodify N.J.A.C. 10:37B, Psychiatric Community Residences for Youth, as N.J.A.C. 10:192, and N.J.A.C. 10:37H, Youth Case Management Standards, as N.J.A.C. 10:193, published elsewhere in this issue of the New Jersey Register. The Department intends to adopt the above-referenced recodifications prior to or concurrently with this one.

The Department also proposes to repeal N.J.A.C. 10:37 Appendix B, Level I Standards, from N.J.A.C. 10:37 and to propose new rules identifying Level I Standards within N.J.A.C. 10:190. Level I standards are those standards with which mental health programs must be in full compliance in order to be granted or to continue to receive a Department license. Appendix B reproduces the text of existing sections from several chapters to indicate that they are Level I

standards. This proposal seeks to transfer the identification of Level I standards for these chapters to the new chapter, N.J.A.C. 10:190, and to reduce unnecessary duplication by citing the applicable rules without reproducing the text. No new Level I standards are proposed; the proposed amendments reiterate and reorganize citations of Level I standards already identified in existing rules.

Specifically, N.J.A.C. 10:37-10 is proposed for readoption with amendments and recodification as N.J.A.C. 10:190. A new heading is proposed for the recodified chapter, Licensing Standards for Mental Health Programs. The current subchapter heading at N.J.A.C. 10:37-10, Licensure of Mental Health Programs, is proposed for readoption and recodification as the subchapter heading at N.J.A.C. 10:190-1, with no change in text.

N.J.A.C. 10:37-10.1 (recodified as N.J.A.C. 10:190-1.1) specifies the scope and purpose of licensure for mental health programs. The section is proposed for readoption and recodification with no change in text.

N.J.A.C. 10:37-10.2 (recodified N.J.A.C. 10:190-1.2) specifies definitions for mental health programs. An amendment is proposed to indicate that the definitions apply to the chapter rather than the subchapter. An amendment is proposed to indicate that the definitions apply to the proposed chapter, rather than to the subchapter. Amendments are proposed in the definition of the term

“Level I standards” to delete references to rules promulgated as of or after July 2, 2001, and to indicate that the list of Level I standards may be found at N.J.A.C. 10:190-1.3, rather than in Appendix B, which is proposed for repeal, as discussed below.

N.J.A.C. 10:37-10.3 (recodified as N.J.A.C. 10:190-1.3) will be replaced by a proposed new rule citing Level I standards, in lieu of the list of Level I standards now in Appendix B. Appendix B identifies specific provisions of the following chapters as Level I standards: N.J.A.C. 10:37, 10:37D, 10:37E, 10:37F, 10:37H and 10:37I. Proposed N.J.A.C. 10:190-1.3(a)1 through 9 cite the same provisions of those chapters as Level I standards (except for the recodified provisions of N.J.A.C. 10:37-12 and 10:37H, discussed below). Proposed N.J.A.C. 10:190-1.3(a)10 through 13 add citations for Level I standards in N.J.A.C. 10:37J, the rules for programs of assertive community treatment (PACT). Although Appendix B does not cite N.J.A.C. 10:37J, citations for that chapter are being added so that citations for all Level I standards can be easily found in a single section. Proposed N.J.A.C. 10:190-1.3(a)14 and 15 cite the provisions in recodified N.J.A.C. 10:191 that correspond to the provisions of current N.J.A.C. 10:37-12.11 and 12.12 cited as Level I standards in Appendix B. Proposed N.J.A.C. 10:190-1.3(a)16 cites the Level I standards for youth case management services, currently governed by N.J.A.C. 10:37H, which will be proposed for recodification as N.J.A.C. 10:193, published elsewhere in this issue

of the New Jersey Register. The Level I standards cited for youth case management services are the same as those now cited in Appendix B.

N.J.A.C. 10:37-10.4 (recodified as N.J.A.C. 10:190-1.4) specifies the licensure process for mental health programs. The proposed amendments at N.J.A.C. 10:37-10.4(a) (recodified as N.J.A.C. 10:190-1.4(a)) update the address of the Office of Licensing. The proposed amendments at N.J.A.C. 10:37-10.4(d) (recodified as N.J.A.C. 10:190-1.4(d)) update citation. The proposed amendments at N.J.A.C. 10:37-10.4(e)1 (recodified as N.J.A.C. 10:190-1.4(e)1) adds an address to which fee waiver requests must be sent. The proposed amendments at N.J.A.C. 10:37-10.4(e)2 (recodified N.J.A.C. 10:190-1.4(e)2) delete references to fee waivers in Fiscal Year 2004 , which are no longer applicable.

Current N.J.A.C. 10:37-10.5 (recodified as N.J.A.C. 10:190-1.5) specifies the licensure fee schedule for ambulatory mental health programs. This section is proposed for readoption and recodification with no change in text.

Current N.J.A.C. 10:37-10.6 (recodified as N.J.A.C. 10:190-1.6) identifies the applicable standards for various services provided by mental health programs. Amendments to update citations are proposed at N.J.A.C. 10:37-10.6(b)1 and (d)1 (recodified as N.J.A.C. 10:190-1.6(b)1 and (d)1).

Current N.J.A.C. 10:37-10.7 (recodified as N.J.A.C. 10:190-1.7) specifies provisions for site reviews for mental health programs. An amendment is proposed at paragraph (d)2 changing “division” to “divisions” to indicate that site review teams may include representatives of more than one division of the Department.

Current N.J.A.C. 10:37-10.8 (recodified as N.J.A.C. 10:190-1.8) specifies the types of licensure for mental health programs. An amendment is proposed to update a citation at N.J.A.C. 10:37-10.8(a)1 (recodified as N.J.A.C. 10:190-1.8(a)1).

Current N.J.A.C. 10:37-10.9 (recodified as N.J.A.C. 10:190-1.9) specifies provisions for waivers of standards for mental health programs. The proposed amendments at N.J.A.C. 10:190-1.9(a) indicate that waivers will be considered at the discretion of the Department, and that the Director of the Office of Licensing will consult with the Assistant Commissioner for Mental Health Services on waivers. A reference to consultation with the Division Director is proposed for deletion, as that position no longer exists. The proposed amendments also add language to reflect current practice in the Department’s consideration of waivers. In addition to considering the factors currently specified, the Department will consider whether a waiver would not impair the effective and efficient provision of mental health services within the system of

care. An amendment is proposed at N.J.A.C. 10:37-10.9(b) (recodified as N.J.A.C. 10:190-1.9(b)) to update a citation.

Current N.J.A.C. 10:37-10.10 (recodified as N.J.A.C. 10:190-1.10) specifies provisions for license renewal or revocation for mental health programs. Amendments are proposed to update citations at N.J.A.C. 10:37-10.10(b) and (g) (recodified as N.J.A.C. 10:190-1.10(b) and (g)).

Current N.J.A.C. 10:37-10.11 (recodified as N.J.A.C. 10:190-1.11) specifies provisions for review of administrative determinations for mental health programs. The proposed amendments indicate that a mental health program may apply to the Assistant Commissioner of the Department's Office of Program Accountability and Integrity, rather than to the Division Director, for a review. Reorganization Plan No. 007-2005 authorizes the Assistant Commissioner to make decisions in such matters. Further, the proposed amendments refer to "an agency decision" rather than "a final agency decision," since the Assistant Commissioner's decision in a review may not be a final agency decision if the mental health program requests an administrative hearing after the review.

Current N.J.A.C. 10:37-10.12 (recodified as N.J.A.C. 10:190-1.12) specifies provisions for administrative hearings of appeals for mental health programs. An amendment is proposed to refer to "an agency decision" rather

than “a final agency decision,” since an agency decision that is being appealed may not be a final agency decision until the appeal is resolved.

Current N.J.A.C. 10:37-12 is proposed for readoption with amendments and recodification as N.J.A.C. 10:191. A new heading is proposed for the recodified chapter, “Children’s Partial Care Programs.” The current subchapter heading at N.J.A.C. 10:37-12 is proposed for readoption with amendments and recodification as the subchapter heading at N.J.A.C. 10:191-1. The heading is proposed for amendment from “Children’s Partial Care Programs” to “Children’s Partial Care Program Standards.”

Current N.J.A.C. 10:37-12.1 (recodified as N.J.A.C. 10:191-1.1) specifies the purpose, scope and goals of the rules. Proposed N.J.A.C. 10:191-1.1(d) is being added to specify the rules that must be met by a provider agency operating a children’s partial care program. The amendment indicates that a provider agency must comply with both N.J.A.C. 10:191 and 10:190. This amendment is necessary to ensure that the rules continue to subject children’s partial care programs to mental health licensing rules. Proposed new N.J.A.C. 10:191-1.1(e) prohibits a children’s partial care program from operating unless it has secured a license from the Department, or is licensed by the Department of Health and Senior Services. This amendment is necessary to ensure that the rules continue to subject children’s partial care programs to licensure as a condition of operation. These amendments will enable N.J.A.C. 10:191 to stand alone once

N.J.A.C. 10:37-10 and 12 are recodified as new chapters and no longer fall within the scope of N.J.A.C. 10:37. These amendments do not subject children's partial care programs to any new licensure requirements, but reiterate existing licensure requirements.

Current N.J.A.C. 10:37-12.2 (recodified as N.J.A.C. 10:191-1.2) specifies the definitions of terms used in the rules. An amendment is proposed to indicate that the definitions apply to the proposed chapter, rather than to the subchapter. The terms "Division" and "DYFS" are proposed for deletion, as these terms are not used in the rules. Definitions of the terms "license," "Level I standards" and "Level II standards" are proposed to be added. The proposed definitions reiterate definitions of terms at N.J.A.C. 10:37-10.2 (recodified N.J.A.C. 10:190-1.2) and add specific provisions applicable to children's partial care programs. The proposed term "License" is defined as "a Department document which provides the provider agency with the authority to operate a children's partial care program." The proposed term "Level I standards" is defined as "those standards, as specified in this chapter, with which a children's partial care program must be in full compliance in order to be granted or to continue to receive a Department license. Level I standards are those standards which relate most directly to client rights, safety, and staffing. With specific reference to children's partial care programs, Level I standards are staffing requirements at N.J.A.C. 10:191-1.11(a) and staffing responsibilities at N.J.A.C. 10:191-1.12(b), (d), (f) and (h). The Level I standards cited in the proposed definition are



consistent with those cited in current N.J.A.C. 10:37 Appendix B and N.J.A.C. 10:190-1.3(a)14 and 15. The proposed term "Level II standards" is defined as "all licensing standards, as specified in this chapter, not designated as Level I."

Current N.J.A.C. 10:37-12.3 (recodified as N.J.A.C. 10:191-1.3) describes the population to be served by children's partial care programs. Amendments are proposed at N.J.A.C. 10:37-12.3(a)1 (recodified as N.J.A.C. 10:191-1.3(a)1) to delete a reference to the Arthur Brisbane Child Treatment Center, as that facility is closed, and to delete the unnecessary word "program" following the phrase "psychiatric community residence for children."

Current N.J.A.C. 10:37-12.4 (recodified as N.J.A.C. 10:191-1.4) specifies requirements for program services. Current N.J.A.C. 10:37-12.5 (recodified as N.J.A.C. 10:191-1.5) specifies requirements for age-appropriate services. Current N.J.A.C. 10:37-12.6 (recodified as N.J.A.C. 10:191-1.6) specifies admission requirements. Current N.J.A.C. 10:37-12.7 (recodified as N.J.A.C. 10:191-1.7) specifies intake requirements. Current N.J.A.C. 10:37-12.8 (recodified as N.J.A.C. 10:191-1.8) specifies service plan requirements. Current N.J.A.C. 10:37-12.9 (recodified as N.J.A.C. 10:191-1.9) specifies requirements for progress notes. Current N.J.A.C. 10:37-12.10 (recodified as N.J.A.C. 10:191-1.10) specifies requirements for termination, discharge, and referral. These sections are proposed for readoption and recodification with no change in text.

Current N.J.A.C. 10:37-12.11 (recodified as N.J.A.C. 10:191-1.11) specifies staffing requirements. An amendment is proposed at N.J.A.C. 10:37-12.11(a)4 (recodified as N.J.A.C. 10:191-1.11(a)4) to update a citation.

Current N.J.A.C. 10:37-12.12 (recodified as N.J.A.C. 10:191-1.12) specifies staffing responsibilities. This section is proposed for readoption and recodification with no change in text.

### Appendix B

Current Appendix B, Level I Standards, is proposed for repeal. All citations of Level I standards in Appendix B will be replaced by proposed N.J.A.C. 10:190-1.3, as discussed above.

### Social Impact

The rules proposed for readoption with amendments, recodifications and repeal are expected to positively impact adult consumers of mental health services by establishing and maintaining standards that will continue to promote the effective delivery of quality services. Specifically, the provision of these services and the utilization of these standards are expected to promote greater independence and improved quality of life, as well as reduced hospitalization among the consumers receiving the services. These rules provide procedures and standards that will foster the integration of qualified individuals into

appropriate community settings and will make available services to support a higher quality of life.

Additionally, the standards contained in the rules proposed for readoption with amendments, recodification, and repeal assist provider agencies by providing clear specifications and various benchmarks in their pursuit of providing high quality services. New Jersey taxpayers benefit from these rules because they promote the effective and efficient expenditure of public revenues.

#### Economic Impact

The rules proposed for readoption with amendments, recodification, and repeal will not impose an economic burden that is significantly different than it was in the past. The proposed amendments to the confidentiality provisions (N.J.A.C. 10:37-6.79) will only serve to make these requirements more clear and complete, reducing confusion and inefficiency in providers' agencies' operations. Similarly, the proposed amendments moving the subchapters regarding licensure (N.J.A.C. 10:37-10) and children's partial care programs (N.J.A.C. 10:37-12) to related, new Department-wide chapters will result in more convenient reference for providers' agencies and streamline their compliance efforts. As in the past, the Department believes that provider agencies can comply with the rules without expenditures in addition to the funding received from the Division and other sources to provide these services. The promulgation

of these standards is not intended or expected to impact the amount of Division funding available to provide these services in the future.

The funding of and the establishment of standards for the services which are subject to these rules have a positive economic impact on service recipients with limited incomes because the services are generally made available to them at no cost. The Department also believes that New Jersey taxpayers benefit from the effective delivery of these services because the services reduce the need for much more expensive psychiatric hospitalizations.

The rules proposed for readoption with amendments continue the licensure fee requirements first adopted in 36 N.J.R. 1203(a). While the fee requirements have an economic impact on providers, the revenue generated from the imposition of these fees is necessary to ensure the continued delivery of high-quality mental health services to consumers. Further, these rules are in accordance with legislative mandate (N.J.S.A. 30:9A-19). The fee structure was developed with consideration of its financial impact on providers of varying sizes. Small providers without revenue-generating capabilities may seek a waiver from the Department, provided they have met the provisions of N.J.A.C. 10:190-1.4(e). The rating structure takes into account the burden on providers of multiple sites by reducing fees for multiple programs.

### Federal Standards Statement

The rules proposed for readoption with amendments, recodifications and a repeal impose requirements that are more stringent than those imposed by Federal law in the area of confidentiality (N.J.A.C. 10:37-6.79). State law permits, without the consumer's authorization or a court order, disclosure of private health information between treatment providers only where the entities are contracted with the Division of Mental Health Services or are "a screening service, short-term care or psychiatric facility . . . ." (See N.J.S.A. 30:4-24.3) The Health Insurance Portability and Accountability Act (HIPAA) 45 CFR Parts 160 and 164, allows, without authorization from the consumer or a court order, disclosure of private health information for treatment purposes to another treatment professional or facility even if they do not have a contract or affiliation agreement with one another. Because HIPAA requires that if the provisions of State privacy laws and the HIPAA regulations conflict, the more protective of privacy prevails, the Department is obliged to conform its disclosure of information to the more restrictive State law.

No other aspect of the rules proposed for readoption with amendments, recodifications and repeal is subject to Federal law.

### Jobs Impact

The rules proposed for readoption with amendments, recodifications and a repeal will neither generate nor cause the loss of any jobs.

### Agriculture Industry Impact

The rules proposed for readoption with amendments, recodifications, and a repeal will have no impact on agriculture in the State of New Jersey.

### Regulatory Flexibility Analysis

Some providers of Division-funded mental health services may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq. The rule proposed for readoption with amendments, recodifications, and a repeal set forth a number of reporting, recordkeeping and compliance requirements on such agencies, deemed necessary to ensure the efficient delivery of services.

Agencies are required to provide consumers with written notice of their rights and of any rules governing consumers' conduct (N.J.A.C. 10:37-4.5(c)). Agencies must also prominently post in facilities written notice of consumer's rights, and, in the case of consumers adjudicated incompetent, maintain the guardians' written acknowledgment of receipt in consumer files (N.J.A.C. 10:37-4.5(e) and (h)). Agencies are required to establish consumer complaint procedures (N.J.A.C. 10:37-4.6).

Inpatient units must have written admissions policies, including admission criteria and referral procedures, which must be distributed to referral agencies (N.J.A.C. 10:37-5.55(b)). Inpatient units must maintain written affiliation agreements with public psychiatric hospitals regarding voluntary admissions (N.J.A.C. 10:37-5.56(d)). Requirements regarding the development and review

of treatment and service plans are set forth at N.J.A.C. 10:37-5.59(d). Staff number and qualifications shall be delineated in a written plan (N.J.A.C. 10:37-5.60(g)). Agencies shall have affiliation agreements with mental health and human service providers to assure consumer access to these services (N.J.A.C. 10:37-5.75(d)).

Agencies are required to document and update service and treatment planning (N.J.A.C. 10:37-6.42, 6.44, 6.45, 6.73, 6.74, and 6.75). Agencies are also required to provide consumers with information about medications and to maintain records regarding a consumer's medication history and current regimen (N.J.A.C. 10:37-6.53 and 6.54).

Requirements regarding the compilation, storage, dissemination, access to and confidentiality of consumer's records are set forth at N.J.A.C. 10:37-6.76; 6.77; 6.78; and 6.79). Reporting requirements for agencies receiving Division funds are delineated at N.J.A.C. 10:37-6.84.

Agencies must submit to the Division a written description of certain modalities and obtain the Division's approval before using them (N.J.A.C. 10:37-6.88).

To assure continuity of care, county and State psychiatric hospitals must have recently negotiated affiliations agreements with agencies, detailing community/hospital interaction (N.J.A.C. 10:37-6.104).

Requirements for the reporting of unusual incidents are located at N.J.A.C. 10:37-6.108.

Several record-keeping requirements are found in Subchapter 8, Conditions Governing State Grants for Construction Assistance for Community Mental Health Facilities. N.J.A.C. 10:37-8.7(a) requires applications to Community Service Capital Improvement Program to be filed on official forms provided. N.J.A.C. 10:37-8.7(b) requires sponsoring agencies to submit applications for grants to the Division and to the appropriate county mental health board. N.J.A.C. 10:37-8.8 delineates the following requirements: (1) compliance with all applicable Federal , State, and local provisions for permits, certificates, approvals and assurances (8.8(a)); (2) a formal commitment of local match resources, where required by the Division (8.8(b)); (3) a formal commitment to provide services for a minimum time period agreed upon by the Division and the sponsoring agency (8.8(c)); (4) consistency with the Division policies (8.8(d)); and (5) submission of fiscal assurances as requested by the Division. N.J.A.C. 10:37-8.12 requires that each project establish and maintain appropriate methods for conducting fiscal affairs, including adequate records and the submission to the Division of requested reports.

Additional record-keeping requirements are found in Subchapter 190, Licensure Standards for Mental Health Programs (recodified from Subchapter 10). New N.J.A.C. 10:190-1.1 (recodified from N.J.A.C. 10:37-10.1) requires, as a precondition to the operation of a mental health program, licensure and a purchase of service contract or affiliation agreement with the Division, or



licensure with the Department of Health and Senior Services. New N.J.A.C. 10:190-1.4 (recodified from N.J.A.C. 10:37-10.4) delineates the licensure application process, including provisions for deemed status (10.4(c)), fees (10.4(d)), and waivers (10.4(e)).

Agencies must develop and implement a quality assurance (QA) plan, which details the program's scope, organization, monitoring, evaluation, and problem correction activities (N.J.A.C. 10:37-9.1(a)1; 9.2; and 9.4). Documented reports of all ongoing monitoring and evaluation activities shall be produced (N.J.A.C. 10:37-9.5). An annual appraisal of the QA program shall be submitted to the agency's administration and this administrative review of QA findings shall be documented (N.J.A.C. 10:37-9.6, 9.7; and 9.10). A utilization review (UR) component of the QA plan shall use monthly statistical summaries and written criteria for admission and continued stay in each program element (N.J.A.C. 10:37-9.8). A written policy regarding the confidentiality of these findings shall be developed and observed (N.J.A.C. 10:37-9.8).

Agencies licensed to provide children's partial care programs shall implement written policies and procedures that addressing the eligibility parameters of this program (N.J.A.C. 10:37-12.5), admission procedures (N.J.A.C. 10:37-12.6), intake procedures (N.J.A.C. 10:37-12.6), the development of service plans (N.J.A.C. 10:37-12.8), the maintenance of progress notes (N.J.A.C. 10:37-12.9), and termination, discharge and referral procedures (N.J.A.C. 10:37-12.10). These provisions will remain in effect upon recodification of the subchapter.

There is no need for provider agencies to employ outside professional services to comply with these provisions; nor is there any requirement for them to extend capital costs to comply with these rules. Any costs of compliance incurred by the agencies are covered in the contracts between the agencies and the Division, except for licensure fees, which are discussed in the Economic Impact Statement above. The reporting, recordkeeping and other compliance requirements imposed upon such agencies must be uniformly applied, regardless of the size of the agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality and effectiveness. These standards are important because the individuals with mental illness receiving these services typically have been psychiatrically hospitalized and would be at risk of additional costly and personally disruptive hospitalizations in the absence of quality community services delivered in accordance with these standards.

#### Smart Growth Impact

It is not anticipated that the rules proposed for readoption with amendments, recodifications, and a repeal will have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:37.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:37 Appendix B.

Full text of the proposed amendments and recodifications follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

. . .

#### 10:37-6.79 Confidentiality of records

(a) [These requirements govern the disclosure of] All certificates, applications, information and records [of] directly or indirectly identifying persons who are receiving or have received [State-funded] mental health services[. This section shall only apply to people for whom a formal client record has been established.] from a provider licensed by the Department, or for whom such services were sought, shall be kept confidential and shall not be disclosed by any person, except under the following circumstances:

[1. Disclosure of records and information to third parties: All information and records directly or indirectly identifying any person currently or formerly receiving services from an agency (client) shall be treated as confidential, and may only be disclosed in the following circumstances to persons presenting appropriate identification:]

1. Upon authorization of the consumer:

i. For adult [clients] consumers: Upon the written [consent] authorization of the [client] consumer, or his or her legal guardian or authorized representative, if any.

ii. For [clients] consumers who are minors:

(1) [Disclosure upon the consent of a minor:] A minor [client], 14 years or older, who has requested admission and been admitted voluntarily to a psychiatric facility, special psychiatric hospital, or children's crisis intervention service pursuant to R. 4:74-7A(c), may [consent to] authorize the disclosure of his or her records in the same manner as an adult[.] :

(2) [Disclosure upon the consent of a parent or legal guardian: A] The minor's parent or legal guardian may authorize the disclosure of [a minor client's] the minor's records, provided that the minor shall be given prior notice and an opportunity to object to the disclosure. Objection by a minor, 14 years or older, who has requested admission and been admitted voluntarily to a psychiatric facility, special psychiatric hospital, or children's crisis intervention service pursuant to R. 4:74-7A(c), shall render the [consent] authorization of the parent or guardian void[.]; or

(3) [Disclosure to a parent or legal guardian:] Disclosure of the clinical records of a minor [client], 14 years or older, [to a parent or legal guardian] who has requested admission and been admitted voluntarily to a psychiatric facility, special psychiatric

hospital, or children's crisis intervention service pursuant to N.J.R.Ct. 4:74-7A(b)(6), is [authorized] permitted only upon [the] written [consent] authorization of the minor[.]; however, a parent or guardian, upon proper inquiry, shall be told the minor patient's current medical condition if the minor does not object to such disclosure;

[iii.] 2. Pursuant to a court order[:] directing disclosure, upon its determination that disclosure is necessary for the conduct of its proceedings before it and that failure to make such disclosure would be contrary to the public interest; or

[(1) The records of a minor shall be released upon request to the Division of Youth and Family Services in connection with investigations of whether the minor has been abused or neglected.

(2) The guardian of a deceased person who formerly received services from the agency, or such person's chosen executor, administrator or other personal representative of his or her estate, or if no such persons exist, a person otherwise empowered by court order, shall exercise control of the disclosure of such person's records.]

3. To carry out any of the provisions of Title 30 or Article 9 of Chapter 82 of Title 2A of the New Jersey Statutes (N.J.S.A. 2A:82-41, or as required by other Federal or State law.

[iv.] (b) [Client] Consumer records may also be disclosed to the following persons, upon presentation of appropriate credentials, under these circumstances:

1 Employees of the agency who are involved in the care of the consumer provided, however, that when a consumer enters treatment(s) he or she will be informed that agency staff will have access to his or her records.

i. Employees of the agency may disclose information that is relevant to a consumer's current treatment to the staff of another such agency, so long as such disclosure is in compliance with the Health Insurance Portability and Accountability Act 45 CFR Parts 160 and 164;

[(1)] 2. Clinical records audit teams, monitoring and site review staff designated by the [Division] Department, the Office of Legislative Services, the New Jersey Department of Health and Senior Services, and the Center for Medicaid & Medicare Services;

Recodify existing (2) and (3) as 3. and 4. (No change in text.)

(c) The records of a minor shall be released upon request to the DHS Office of Children's Services in connection with investigations of whether the minor has been abused or neglected.

[v.] (d) Whenever possible, names of [clients] consumers shall be deleted from the records being reviewed under [(a)1iv] (b) above and consumers shall be identified only by use of their initials.

(e) Nothing in this section shall preclude disclosure, upon proper inquiry and after the consumer has had the opportunity to object and does not express an objection, of information as to a consumer's current medical condition to any relative or friend. Information may be disclosed to any licensed mental health provider or medical health care provider who has a contract with the Division of Mental Health Services or the Department of Human Services, or to the consumer's personal physician if it appears that the information is to be used for the benefit of the consumer.

(f) The records of a deceased individual who has received services or for whom services were sought may be released to the estate's administrator or executor. If there is no administrator or executor, records may be released to the next of kin indicated in the consumer record. A valid written authorization for the release of information must be obtained from next of kin:

1. natural or adoptive parents;
2. siblings;
3. grandparents;
4. family caregiver of record;

5. spouse; or

6. child/children.

[2.] (g) Where [Conditions of] disclosure to third parties is authorized pursuant to (b) above, the following conditions shall be observed:

[i.] 1. [When records are released pursuant to (a)1 above, the] The custodian of the records shall, by written notice, advise the person receiving the records that disclosure without the [consent] authorization of the person who is the subject of the records, or as otherwise provided by law, is prohibited.

[ii.] 2. Information and records disclosed [to third parties] for any purpose shall be limited to that information which is relevant and necessary for the purpose of the disclosure, except as authorized by [consent] by the consumer or his or her representative or required by law. Where the disclosure is between agencies for the purpose of treatment and is not limited by the consumer's authorization, the agency releasing the information shall rely upon the recipient's assertion of need for the information.

[iii.] 3. A request for information regarding a [client] consumer and the action taken upon the request shall be recorded in the [client's] consumer's clinical records and accounted for if requested by the consumer for up to 6 years from the date of the disclosure.



[iv.] 4. [Clients] Consumers or other persons consenting to the disclosure of records shall be informed of their right subject to [(a)4] 6.79(i) below to inspect the material to [the] be disclosed.

[v.] 5. Information disclosed shall be limited to information generated at the provider agency. However, the agency shall list the sources of nondisclosed information contained in the [client's] consumer's records.

[3. Specificity:]

[i.] (h) Consent to disclosure of records shall be evidenced by a signed authorization from the consumer or his or her legally authorized representative.

1. The authorization shall contain the following:

[(1)] i. The name of the agency disclosing the information;

[(2)] ii. (No change in text.)

[(3)] iii. The name of the [client;] consumer;

Recodify existing (4) and (5) as iv. and v. (No change in text.)

[(6)] vi. The date on which the [consent] authorization is signed; and

[(7)] vii. The signature of the [client] consumer or of a person authorized by law to sign for the [client] consumer, following a statement that the undersigned understands the nature of the authorization and has been informed that [she/he] he or she has

the right to revoke consent at any time by written communication to the custodian of the records.

[ii.] 2. Unless the time limit of, or the event that will trigger, expiration has been determined with the [client] consumer and [notes] noted on the release form, [client] consumer permission to release information automatically expires four months from the date the [release] authorization is signed by the [client] consumer. [This shall not apply to quality assurance reviews and inspections by regulatory agencies cited in these regulations.]

[4.] (i) [Client] Consumer access to records:

[i.] 1. In case of Family Therapy, if the records for all participants have been integrated, no single family member shall have access to those records unless all adult participants [over 14 years of age] and the guardians of any minor participants agree through a signed [release] authorization form.

[ii.] 2. A [client] consumer currently receiving services from an agency is entitled to inspect and/or receive a copy of his or her own clinical records unless the [client's] consumer's treating clinician certifies to the Director of the agency that such disclosure would be seriously harmful to the [client's] consumer's treatment or health. A denial of access to records shall be limited only to the extent necessary to protect the [client] consumer. Denial shall be accompanied by a verbal explanation to the

[client] consumer . Denial shall be documented in the [client's] consumer's records, as to the clinical data, findings, etc., that led to the denial of access.

[iii.] 3. A [client] consumer is entitled to inspect or receive a copy of his or her [non-clinical] financial records.

[iv.] 4. A [client] consumer who formerly received services from an agency is entitled to inspect and/or receive a copy of his or her records. However, if a particular [client] consumer has been inactive for brief periods of time in the past and repeatedly requests and obtains service re-admission, the same criteria for access to records outlined in [(a)4ii] 6.79(i)2 above shall apply.

[5.] (j) Modification of records:

[i] 1. A [client] consumer may submit in writing to the Director of the agency a statement [of reasonable length] for the purpose of clarifying or correcting [an allegedly ambiguous or incorrect statement in] his or her clinical record. Such a statement shall become part of the [client's] consumer's clinical records.

[ii] 2. A [client] consumer may request in writing to the Director of the agency an amendment or clarification of a clinical record and, not later than 30 days after the date of receipt of such request, the agency shall acknowledge in writing such request and, within 10 days thereafter:

[(1)] i. Make each correction, in accordance with the [client's] consumer's request, of any or all portions of a record which the [client] consumer believes is not accurate or complete; or

[(2)] ii. Inform the [client] consumer of its refusal to amend the record or portions thereof, in accordance with such [client's] consumer's request; the reason for the refusal should be explained to the [client] consumer and documented in the [client's] consumer's record.

[6.] (k) [Notice to clients:] At the time that a formal [client] consumer record is going to be initiated for ongoing service purposes, each [client] consumer shall receive notice:

[i.] 1. Of the specific conditions under which information may be disclosed without his or her [consent] authorization;

[ii.] 2. That he or she may request access to his or her records;  
[and]

[iii.] 3. That he or she may supplement or request a modification of his or her clinical records[.] ; and

4. Of the name of the agency's privacy officer and the avenues for redress of any complaints the consumer may have that his or her privacy was violated.

(l) Agency records directly or indirectly identifying a consumer shall be retained for six years.

## CHAPTER 190

### LICENSURE STANDARDS FOR MENTAL HEALTH PROGRAMS

#### SUBCHAPTER [10.] 1. LICENSURE OF MENTAL HEALTH PROGRAMS

[10:37-10.1] 10:190-1.1 (No change in text.)

[10:37-10.2] 10:190-1.2 Definitions

The following words and terms, as used in the [sub]chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

“Level I standards” means those standards with which mental health programs must be in full compliance in order to be granted or to continue to receive a Department license. Level I standards are those standards which relate most directly to client rights, safety, and staffing. The list of Level I standards for [promulgated rules as of July 2, 2001] mental health programs may be found [in the chapter Appendix B, incorporated herein by reference] at N.J.A.C. 10:190-1.3. [Any rules promulgated after July2, 2001 will identify Level I standards.]

. . .

[10:37-10.3] 10:190-1.3 [(Reserved)] Level standards

(a) The following rules shall be Level I standards for mental health programs:

1. Consumer rights at N.J.A.C. 10:37-4.5(b), (c), (f), and (h);

2. Consumer complaint/agency ombuds procedure at N.J.A.C. 10:37-

4.6(b);

3. Medication education and counseling at N.J.A.C. 10:37-6.53(a), (b), (c) and (e);
4. Environment at N.J.A.C. 10:37D-2.5(a);
5. Qualification of clinical staff at N.J.A.C. 10:37D-2.13(a);
6. Staffing requirements for outpatient services at N.J.A.C. 10:37E-2.6(a);
7. Therapeutic environment for partial care services at N.J.A.C. 10:37F-2.7;
8. Staffing requirements for partial care services at N.J.A.C. 10:37F-2.8(a), (b) and (c);
9. Staffing requirements for family support services at N.J.A.C. 10:37I-5.10(b);
10. Program intensity requirements for programs of assertive community treatment (PACT) at N.J.A.C. 10:37J-2.4;
11. Services to be provided and service coordination requirements for PACT at N.J.A.C. 10:37J-2.5;
12. Termination and discharge requirements for PACT at N.J.A.C. 10:37J-2.7;
13. Staff requirements for PACT at N.J.A.C. 10:37J-2.8;
14. Staffing requirements for children's partial care programs at N.J.A.C. 10:191-1.11(a);
15. Staffing responsibilities for children's partial care programs at N.J.A.C. 10:191-1.12(b), (d), (f) and (h); and

16. Staffing requirements for youth case management services at N.J.A.C.

10:37H-2.10(b), (c) and (e).

10:37-10.4] 10:190-1.4 Licensure process

(a) All applications, fees(s), payments, andinquiries related to licensure of mental health programs shall be made to:

New Jersey Department of Human Services

Office of Licensing

Mental Health Licensing

PO Box [727] 707

Trenton, New Jersey 08625-[0727] 0707

(b) – (c) (No change.)

(d) A mental health program applying for initial licensure shall pay an application fee in the amount specified in N.J.A.C. [10:37-10.5] 10:190-1.5. After initial licensure, the mental health program shall pay an annual licensure renewal fee in the amount specified in N.J.A.C. [10:37-10.5] 10:190-1.5. No license shall be issued or renewed until payment in full has been received by the Department. No licensure fees shall be refunded. Failure to submit the appropriate licensure fee in a timely manner shall result in revocation of the license. Payment of licensure renewal fees must be received by the Department on or before the expiration date of the issuance of the license. Payment shall be submitted with the application for initial or renewed licensure.

(e) Providers without revenue-generating capabilities may seek a waiver of the license fee requirement from the Department, provided that they comply with each of the following requirements:

1. A previously licensed provider shall submit a written waiver request to the Department [at the location referenced above.] at the following address:

Division of Mental Health Services

P.O. Box 727

Trenton, New Jersey 08625-0727

2. An initial licensure applicant seeking a waiver of the fee requirement shall submit a waiver request with the licensure application. [An existing licensee seeking a waiver for Fiscal Year 2004 shall submit the application for a fee waiver by March 31, 2004.] Existing licensees seeking waivers [in subsequent years] shall submit the application for a fee waiver annually no less than 60 days before the anniversary date of the expiration of the license; and

3. (No change.)

10:[37-10]190-1.5 (No change.)

[10:37-10.6] 10:190-1.6 Applicable standards

(a) (No change.)



(b) Mental health programs shall comply with the applicable standards for the following mental health services [which] that they provide:

1. Youth partial care services (YPC) at N.J.A.C. [10:37-12] 10:191;

2 - 6. (No change.)

(c) (No change.)

(d) Mental health programs under contract with the Division shall comply with all of the following standards:

1. Community Mental Health Services Act rules [, in this chapter] at N.J.A.C. 10:37; and

2. (No change.)

(e) Mental health programs with an affiliation agreement with, but not under contract with, the Division shall comply with the following standards:

1. [Client] Consumer rights at N.J.A.C. 10:37-4.5(b) through (h)6;

2. [Client] Consumer complaint/agency ombud procedures at:

i - iii. (No change.)

3. (No change.)

4. [Client] Consumer record rules at:

i. – vi. (No change.)

5 - 7. (No change.)

[10:37-10] 10:190-1.7 Site reviews

(a) – (c) (No change.)

(d) Site reviews shall be conducted by individual staff of the Department or by a team coordinated and led by staff of the Department.

1. (No change.)

2. Teams may include representatives from the Division of Mental Health Services, other [division] divisions of the Department of Human Services and/or other departments.

(e) - (k) (No change.)

[10:37-10.8] 10:190-1.8 Types of licensure

(a) Mental health programs will receive a full license if:

1. They pay the fee required by N.J.A.C. [10:37-10.5] 10:190-1.5; and

2. (No change.)

(b) – (e) (No change.)

[10:37-10.9] 10:-1.9 Waiver

(a) Waivers of specific rules shall be considered, at the discretion of the Department, provided that, in the opinion of the Director of the Office of Licensing, in consultation with the [Director of the Division of] Assistant Commissioner for Mental Health Services, or their designees, such waiver is justified as outlined below, would not impair the effective and efficient provision of mental health services within the system of care, and would not endanger or adversely affect the life, safety or welfare of clients.

(b) Requests for waiver shall be made to the Department, in writing to the address as listed in N.J.A.C. [10:37-10.4(a)] 10:190-1.4(a). The written request for waiver shall include the following:

1- 4. (No change.)

(c) (No change.)

[10:37-10.10] 10:190-1.10 License renewal or revocation

(a) (No change.)

(b) A mental health program seeking renewal of its license shall submit a fee in accordance with the schedule delineated at N.J.A.C. [10:37-10.5] 10:190-1.5 to the address indicated in N.J.A.C. [10:37-10.4(a)] 10:190-1.4(a).

(c) – (f) (No change.)

(g) In the event that the Department revokes or does not renew the license, the Director shall send written notice to the mental health program's chief executive officer or designee and to the mental health program's board of directors or owners indicating the basis for the revocation or non-renewal and the rights to a review as provided at N.J.A.C. [10:37-10.11] 10:190-1.11 and an administrative hearing as provided at N.J.A.C. [10:37-10.12] 10:190-1.12.

[10:37-10.11]190-1.11 Review of administrative determinations

Whenever licensure is denied, revoked or not renewed and the mental health program disputes the basis of the action, the mental health program may apply to the [Director of the Division of Mental Health Services] Assistant Commissioner

of the Department's Office of Program Integrity and Accountability for a review and [a final] an agency decision shall be rendered within 30 days of the receipt of the written request for a review.

[10:37-10.12] 10:190-1.12 Administrative hearing of appeal

If the mental health program chooses to appeal [a final] an agency decision made pursuant to these rules, the mental health program may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

[Subchapter 11. (Reserved)]

## CHAPTER 191

### SUBCHAPTER [12.] 1. CHILDREN'S PARTIAL CARE PROGRAMS

[10:37-12.1] 10:191-1.1 Purpose, scope and goals

(a) - (c) (No change.)

(d) A provider agency operating a children's partial care program shall comply with the provisions of this chapter and N.J.A.C. 10:190.

(e) No children's partial care program shall operate unless it has secured a license from the Department of Human Services as a children's partial care program, or is licensed by the Department of Health and Senior Services as a health care facility.

[10:37-12.2] 10:191-1.2 Definitions

The words and terms in this [sub]chapter shall have the following meanings, unless the context clearly indicates otherwise[.]:

...

"Division" means Division of Mental Health and Hospitals within the New Jersey Department of Human Services.

"DYFS" means Division of Youth and Family Services within the New Jersey Department of Human Services.]

...

"License" means a Department document which provides the provider agency with the authority to operate a children's partial care program.

"Level I standards" means those standards, as specified in this chapter, with which a children's partial care program must be in full compliance in order to be granted or to continue to receive a Department license. Level I standards are those standards which relate most directly to client rights, safety, and staffing. With specific reference to children's partial care programs, Level I standards are staffing requirements at N.J.A.C. 10:191-1.11(a) and staffing responsibilities at N.J.A.C. 10:191-1.12(b), (d), (f) and (h).

"Level II standards" means all licensing standards, as specified in this chapter, not designated as Level I.

...

[10:37-12.3] 10:191-1.3 Population to be served

(a) Agencies operating children's partial care programs shall serve youth with serious emotional disturbances. First priority for admission shall be youth who are diagnosed as seriously emotionally disturbed and meet one or both of the following criteria:

1. Currently residing in or having previously resided in [Arthur Brisbane Child Treatment Center,] a Children's Crisis Intervention Services (CCIS) unit, a psychiatric community residence for children [program], a private hospital, or other out-of-home placement; and/or

2. (No change.)

(b) (No change.)

Recodify existing N.J.A.C. 10:37-12.4 through 12.10 as 10:190-1.4 through 1.10

(No change in text.)

[10:37-12.11] 10:191-1.11 Staffing requirements

(a) Agencies operating children's partial care programs shall employ sufficient numbers of qualified staff to provide the required services.

1. - 3. (No change.)

4. Each program shall have an individual who meets the qualifications of a program director (see N.J.A.C. [10:37-12.12(b)] 10:191-1.12(b)).

5. - 6. (No change.)

[10:37-12.12] 10:191-1.12 (No change in text.)

## APPENDIX A

## Continuum of Mental Health Settings

**[Client] Consumer Enters System through Self, Other Agency, Gatekeeper**

## Referral Screening

(Most Natural) Restrictive)	MENTAL HEALTH SERVICES						(Most
Reinforcement State	Crisis	Outpatient	Partial	24-hour	Local	County	
and/or Develop Psychiatric	Intervention	Program	Care	Treatment/	Inpatient	Psychiatric	
of Non-Mental Hospital	(Preferably	Element	Program	Crisis Home	Program	Hospital	
Health Natural Supports	in Natural Environment)		Element	for Children	Element		
Own Public	Semi-Indep. Apt.		Transitional	DYFS		Local	
Family/Home Psychiatric	Group Home		Resid. and/or	Resid.		IPU	
Hospital			Sheltered Care	Network			
			Boarding Home	for Children			

## RESIDENTIAL CARE/LIVING ARRANGEMENTS